Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1394

IN THE

Supreme Court of the United States

OCTOBER TERM 1988

FLORENCE M. STANSEL and
WILLIAM A. BURLESON

Petitioners,

v.

AMERICAN SECURITY BANK, N.A.

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

WILLIAM A. BURLESON
(Counsel of Record)
1000 Pennsylvania Avenue, S..E
Washington, D.C. 20003
(202) 544-4111

Attorneys for Petitioners

THE CASILLAS PRESS, INC., WASHINGTON, D.C. (202) 223-1220

1510

QUESTIONS PRESENTED FOR REVIEW

Whether or not Petitioners' were denied due process and equal treatment of the law when the District of Columbia Court of Appeals refused to declare Superior Court Civil Rule 40-II invalid and in violation of the Federal Rules of Civil Procedure; then stayed the Superior Civil Rules as amendments to the Federal Rules of Civil Procedure. When the District of Columbia Court of Appeals court refused to establish jurisdiction on Petitioners' claim, it allowed the Superior Court of the District of Columbia to go to trial on assumed, nonexistent jurisdiction.

PARTIES TO THE ACTION

Petitioners are civil litigants appearing as defendants/counterclaimants in the Superior Court for the District of Columbia and appellants in the District of Columbia Court of Appeals.

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Amendment V. United States Constitution

> ...nor be deprived of life, liberty, or property, without due process of law.

Amendment XIV. United States Constitution

> ...nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the law.

Statutes

> D.C. Code Title 11-946, D.C. Code 1988, as amended.

Cases

Flemming v. United States,
Nos. 86-856 and 86-705, D.C.
Court of Appeals for the
District of Columbia Circuit

In re C.A.P., 356 A.2d 335,
rehearing denied, App. D.C.
359 Ad.2d 11.

Rules

Superior Court Civil Rules 1, 16,
26, 40-I and 40-II.

Federal Rules of Civil Procedure
1, 16 and 26.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM

No.

FLORENCE M. STANSEL and
WILLIAM A. BURLESON
Petitioners,

AMERICAN SECURITY BANK, N.A.
Respondent.

OPINION BELOW

Pursuant to Superior Court Rule 40-I, this case was scheduled for trial on May 24, 1985, in the Superior Court for the District of Columbia.

However, the matter was considered sua sponte by a Superior Court judge for

Columbia Court of Appeals, No. 84-1895. This Petition was denied.

After Defendants' case was removed from the trial calendar, the Civil I judge permitted a new cause of action to be filed but denied discovery to the Defendants and permitted it to the Plaintiff.

One judge ordered that the Superior Court for District of Columbia had jurisdiction to try the new cause of action [a civil RICO claim], but another judge specifically rejected this order.

The District of Columbia Court of Appeals, having previously stayed the Superior Court Civil rules as amendments to the Federal Rules of Civil Procedure, refused to establish civil RICO

jurisdiction for the Superior Court of the District of Columbia.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. §1257, as amended July 29, 1970, 84 Stat. 590. Judgment was entered on the decision of the D.C. Court of Appeals on September 23, 1988. The Petition for Rehearing and Petition En Banc, was denied on November 15, 1988. This Petition is timely, having been filed within ninety (90) days of that date.

STATEMENT OF THE CASE

In early 1981, Defendant/Petitiorers were sued on a note to which they answered and counterclaimed. Interrogatories were exchanged between the parties and depositions were taken. The Plaintiff made

a motion for summary judgment, the Defendant/Petitioners opposed, and after hearing, Plaintiffs' motion was denied. In 1984, two pre-trials were held, discovery was closed, and the trial date of May 24, 1985 was established pursuant to Superior Court Civil Rule 40-I. Petitioners prepared their case for trial and subpoenaed witnesses.

Prior to the trial date of May 24, 1985, a Superior Court judge suggested that Plaintiffs file a motion for Civil I status under Superior Court Civil Rule 40-II; Plaintiff did and the Judge granted it. Subsequently, the case was reopened to add a new cause of action, a RICO claim. Discovery was denied to the Defendant and granted to the Plaintiff. However, one

judge stated the Superior Court has jurisdiction to try the "RICO claim," while another judge rejected his decision.

The court ordered the Defendant/ Petitioners to trial on the issue on November 19, 1986, without benefit of discovery and during the trial, the trial judge provided the Plaintiff instructions on how to defeat a RICO claim.

Judgment was entered against the Defendant/Petitioners on December 11, 1986.

A Motion for New Trial, Reply and Affidavit were filed contesting the unfairness of the proceedings and the lack of Superior Court jurisdiction to hear the civil RICO claim.

REASONS FOR GRANTING THE WRIT

The untimely application of Superior Court Civil Rule 40-II to remove this case from the trial calendar on May 24, 1985, pursuant to Superior Court Civil Rule 40-II was void. Superior Court Civil Rules 40-I and 40-II are not coequal and are mutually exclusive. Once Superior Court Civil Rule 40-I has been applied, Superior Court Civil Rule 40-II cannot be applied. Superior Court Civil Rule 40-II becomes inferior and in conflict with Superior Court Rule 40-I. This action was in violation of Title 11, 946 D.C. Code 1988, as amended. The Superior Court exceeded its statutory grant of rulemaking power by enacting a procedure which abridged a substantive right. Ins re: C.A.P., 356 A.2d 335, rehearing denied,

App. D.C. 359 A.2d 11 (1976). By precluding Petitioner's basic right of discovery, and providing aid and guidance to the Plaintiff, prejudice was created which denied Petitioners any semblance of a fair trial and all events flowing from the initial untimely application of Superior Court Civil Rule 40-II rendered subsequent proceedings void. The Superior Court exceeded its jurisdiction in ordering Petitioners to go to trial on their civil RICO claim. Jurisdiction for this claim was not established by the District of Columbia Court of Appeals.

CONCLUSION

Justice requires fairness. The keystone of fairness is equitable

procedure. Procedures which involve faulty jurisdiction, arbitrary manipulation of trial rules, and prejudicial conduct during the trial, destroy Petitioners' constitutional right to due process and equal treatment of the law.

. The removal of this case from the original trial calendar under an inapplicable rule denied Defendant/ Petitioners due process and equal treatment of law.

The violation of the court's rule, Superior Court Civil Rule 40-II, and the violation of District of Columbia Code, Title 11, 946 permitted an unauthorized trial which constituted a nullity. Flemming v. United States, Nos. 86-856, 86-705, D.C. Court of Appeals.

Petitioners respectfully request this Court to set aside the decision and judgment rendered on September 23, 1988 and direct that this case be restored to the Superior Court trial calendar in its original status, as of May 24, 1985, or to take such other action that it may deem just and proper.

Respectfully submitted,

WILLIAM A. BURLESON
1000 Pennsylvania Ave., S.E.
Washington, D.C. 20003

Attorney for Petitioners

APPENDIX

APPENDIX A: Court Proceedings

Complaint, Answer, and Counterclaim and Answer to Counterclaim Established trial date of May 24, 1985 . . . . . 1a

Case considered sua sponte for Certification to Calendar I denied at This Time Without prejudice to Plaintiff Filing a Motion Seeking Such Status . . 50a

Petition for a Writ of Certiorari to the District of Columbia Court of Appeals, Supreme Court No. 84-194 Petition denied by Supreme Court of the United States . . . 23a

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June 5, 1986 Order Permitting civil RICO claims to be filed in the Superior Court 74a

August 1, 1986, Order Rejecting Civil RICO Claims in the Superior Court of the District of Columbia, and directing that they be filed in the United States District Court 76a

November 19, 1986, Order calling RICO case for trial in the Superior Court for the District of Columbia 52a

Stansel & Burleson v. American Security Bank, No. 87-263, D.C. Court of Appeals for the District of Columbia Circuit 83a

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SUPERIOR COURT OF THE

DISTRICT OF COLUMBIA

CIVIL DIVISION

AMERICAN SECURITY BANK f/k/a AMERICAN SECURITY AND TRUST COMPANY 1501 Pennsylvania Avenue, N.W. Washington, D.C. 20013	)	
Plaintiff	)	
vs.	)	Civil Action No. CA 15870-80
WILLIAM A. BURLESON 1000 Pennsylvania Avenue, S.E. 20003	)	
and	)	
FLORENCE M. STANSEL 1000 Pennsylvania Avenue, S.E. Washington, D.C. 20003	)	
Defendants	)	

COMPLAINT ON A PROMISSORY NOTE

1. Jurisdiction of this Court if founded on 11 D.C. Code §921 (1973 edition).

2. Defendants, on or about March 12, 1979, executed and delivered to Plaintiff a promissory note, a copy of which is hereto annexed as Exhibit A.

3. Defendants jointly and severally owe to Plaintiff the amount of $20,000 plus interest at the rate of prime plus 4% per annum from March 12, 1979.

WHEREFORE, Plaintiff demands judgment against Defendants for the sum of $20,000 plus interest at prime plus 4% per annum from March 12, 1979, plus attorneys' fees of 15% and costs of this proceeding.

COOTER, GELL & COOTER

/s/ Carl L. Gell, Esq.,
Bar No. 192609
Attorney for the
Plaintiff
1575 Eye Street, N.W.
Suite 420
Washington, D.C.
20005
(202) 289-8200

DISTRICT OF COLUMBIA, to wit:

Peter Sorge, Jr., being first duly sworn, deposes and says that he is the Vice President of the Plaintiff herein; that he has full authority and capability to make representations on behalf of the Plaintiff in this matter; that he has read the foregoing Complaint, and that according to his best information and belief, the allegations of the foregoing Complaint are true and correct and the amount stated to be owing are justly due and owing to the Plaintiff by the Defendants, exclusive of setoff or just grounds for defense.

/sig/

Peter Sorge, Jr.

Subscribed and sworn to before me this 14th day of October, 1980.

/sig/

_____
Notary Public

My commission expires: 12/14/81

SUPERIOR COURT OF THE

DISTRICT OF COLUMBIA

CIVIL DIVISION

AMERICAN SECURITY BANK	:	
	:	
Plaintiff	:	
	:	Civil Action
	:	15870-80
v.	:	
	:	
F. M. STANSEL, et al.	:	
	:	
Defendants	:	

ANSWER

Plaintiff's complaint fails to state a cause of action for which relief may be granted.

1. The defendants' deny the allegations in paragraph two of plaintiff's complaint.

2. The defendants' deny the allegations in paragraph three of plaintiff's complaint.

WHEREFORE, defendants' ask that plaintiff's complaint be dismissed with costs.

AFFIRMATIVE DEFENSES

3. The plaintiff has received over $5000.00 in payment of the note.

4. The loan transaction and note are usurious in violation of D.C. Law, T.28 D.C. Code, Sec. 3301 as amended, and are otherwise illegal and unenforceable.

5. Plaintiff has failed to join an indispensable party and has failed to file his claim in Bankruptcy Proceedings.

in re: Gary R. Jaffe,
The Jaffe Group, Inc.
Case No. 80-01038
U.S. Bankruptcy Court

for the Eastern
District of Virginia

6. Defendants' raise the Doctrine of Equitable Estoppel, Fraud and Deceit.

COUNTERCLAIM

On or about March 1, 1978, defendant Stansel was the owner of a contract to purchase a private residence located at #4, 6th St., N.E., Washington, D.C. Defendant approached the plaintiff her banker, The American Security Bank, and sought funds for the payment of the remainder of the down payment for purchase of the residence, with construction financing and permanent financing.

Plaintiff and defendant agreed to the terms of this loan. Plaintiff then contacted defendant Stansel's employer, took him through the property and asked that defendant Burleson sign as an accommodation maker for defendant Stansel's loan.

The plaintiff advanced $20,000.000 to defendant Stansel toward the purchase of the property and told the defendant that when she was ready he would arrange the remaining construction loan and permanent financing. However, and in the meantime, the plaintiff obtained a contractor, prepared an estimate for construction and stated that the defendant now must take the contractor selected by the plaintiff, must pay to the plaintiff of the proceeds after permanent financing and such sum must be paid thru the Australian Embassy, to avoid paying federal and state taxes.

When defendant did not go along with these additional terms, plaintiff refused to abide by its original agreement with the defendant.

Defendant continued making payments on the $20,000.00 until the loan was assumed by a third party. The plaintiff accepted payments from the third party. However, the private residence was sold at foreclosure with the participation of the plaintiff and the third party went bankrupt with the knowledge of the plaintiff and defendant Stansel lost all her property and the money she had invested.

Defendant alleges that a fiduciary relationship was created with the plaintiff, that plaintiff breached this relationship, breached their contractual agreement to loan her money for the repair and permanent financing of her residence and attempted to induce defendant to join into a conspiracy to

violate Federal and State law.

As a result of plaintiff's actions, defendant alleges that she has been damaged and has been humiliated by these and other actions of the plaintiff and others under their authority and control.

WHEREFORE, defendant Stansel demands judgment in the amount of $300,000.00 compensatory damages and $5,000.000.00 punitive damages against the plaintiff.

8. Defendant Burleson received no consideration as the accommodation maker on the note, however, the plaintiff in an attempt to collect from defendant Burleson began an international course of conduct, calculated to force him to pay. Plaintiff closed defendant's accounts at plaintiff's bank, took money from one account to pay a loan which had already

been paid, cashed a check in defendant's account which was a forgery, terminated defendant's credit and did other acts to damage him.

As a result of these and other intentional acts, plaintiff breached a fiduciary confidential and contractual relationship with defendant Burleson and as a result of plaintiff's actions, defendant has been damaged and humiliated.

WHEREFORE, defendant Burleson demands judgment in the amount of $200,000.00 compensatory damages and $3,000,000.00 punitive damages against the plaintiff.

/s/

William A. Burleson
#135277
Pro Se Defendant
Attorney for Defendant

F. M. Stansel

Defendants' demand trial by jury on all issues.

/s/

William A. Burleson

I hereby certify that a copy of the foregoing was mailed postage prepaid to Carl L. Gell, Esq., Attorney for the plaintiff, 1575 Eye Street, N.W., suite 420, Washington, D.C. 20005 on the 27th day of February, 1981.

/s/

William A. Burleson
1000 Pennsylvania Ave, SE
Washington, D.C. 20003
544-4111

SUPERIOR COURT OF THE

DISTRICT OF COLUMBIA

CIVIL DIVISION

AMERICAN SECURITY BANK f/k/a AMERICAN SECURITY AND TRUST COMPANY 1501 Pennsylvania Avenue, N.W. Washington, D.C. 20013	)	
Plaintiff	)	
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WILLIAM A. BURLESON 1000 Pennsylvania Avenue, S.E. 20003	)	
and	)	
FLORENCE M. STANSEL 1000 Pennsylvania Avenue, S.E. Washington, D.C. 20003	)	
Defendants	)	

ANSWER OF AMERICAN BANK
TO DEFENDANTS' COUNTER-CLAIM

The Plaintiff Counter-Defendant, American Security Bank, N.A., by and through its attorneys, Cooter, Gell & Cooter, answers the Counter-Claim as follows:

FIRST DEFENSE

The Counter-Claim fails to state a claim against the Plaintiff Counter-Defendant, American Security Bank, N.A., upon which relief can be granted.

SECOND DEFENSE

1. In answer to Paragraph 7 of the Counter-Claim, the Plaintiff Counter-Defendant, American Security Bank, N.A., admits that the Defendants borrowed $20,000.00 from American Security Bank and executed a Promissory Note evidencing that obligation. In further answer to Paragraph 7, the Plaintiff Counter-

Defendant, American Security Bank, N.A., denies each and every other allegation contained therein.

2. In answer to Paragraph 8 of the Counter-Claim, the Plaintiff Counter-Defendant, American Security Bank, N.A., denies each and every allegation contained therein.

3. Allegations of the Defendants not herein above specifically admitted or denied are hereby denied.

THIRD DEFENSE

The Defendants' claims against the Plaintiff Counter-Defendant American Security Bank, N.A., are barred by the Doctrine of Estoppel.

FOURTH DEFENSE

The Defendants' claims against the Plaintiff Counter-Defendant American

Security Bank, N.A., are barred by the Doctrine of Laches.

FIFTH DEFENSE

The Defendants' claims against the Plaintiff Counter-Defendant American Security Bank, N.A., are barred by their own acts of ratification.

SIXTH DEFENSE

The Defendants' claims against the Plaintiff Counter-Defendant American Security Bank, N.A., are barred by the Statute of Frauds.

SEVENTH DEFENSE

The Defendants' claims against the Plaintiff Counter-Defendant American Security Bank, N.A., are barred by the applicable Statute of Limitations.

EIGHTH DEFENSE

The Defendants' claims against the Plaintiff Counter-Defendant American Security Bank, N.A., are barred by the Doctrine of Waiver.

WHEREFORE, the Plaintiff Counter-Defendant, American Security Bank, N.A., prays that the Defendants' Counter-Claim be dismissed with prejudice and costs assessed against the Defendants.

COOTER, GELL & COOTER

/sig/

Dale A. Cooter, Bar No. 277454

/sig/

Joseph M Cahill, Bar No. 270553
Attorneys for Plaintiff Counter-Defendant, American Security Bank, N.A.
1110 Vermont Ave., N.W.
Suite 510
Washington, D.C. 20005
(202) 289-8200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Answer of American Security Bank to the Defendants' Counter-Claim, was mailed, postage prepaid, this 13th day of March, 1981, to William A. Burleson, Esq. at 1000 Pennsylvania Avenue, S.E., Washington, D.C. 20003.

/sig/

Joseph M Cahill, Bar No. 270553

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

Calendar No. 56-j Civil No. 15870-80

AMERICAN VS. BURLESON ET AL

Plaintiff Defendant

The above-captioned civil action has been set on the JURY calendar for May 28, 1985 at 9:30 A.M. Should a conflict exist, please observe the following: Where all parties consent, a new date may be obtained by notifying the Civil Assignment Office by phone with 10 days of mailing of this notice. All requests made thereafter and all opposed requests must be made by appearing before the Civil Calendar Control Judge. The failure of counsel to seek a new date

within 10 days is a representation to the Court that no conflict exists.

REPORT TO ASSIGNMENT OFFICE JOSEPH WEST
Assignment

Commissioner
CV(11)-584/Mar. 78 J-82178
1750

No. 84-194

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

IRBAN EDWARDS, *et al.*,
Petitioners,

v.

JOSEPH M. HANNON, etc.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

WILLIAM A. BURLESON
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CASILLAS PRESS INC. - 1717 K ST NW WASHINGTON DC - 223-1220

No. 84-194

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

In Re:

IRBAN EDWARDS
JAMES HARDY
LINDA SOWELLS
FLORENCE M. STANSEL,
Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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Of Counsel:

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CASILLAS PRESS INC. - 1717 K ST NW WASHINGTON DC - 223-1220

QUESTIONS PRESENTED FOR REVIEW

Whether the Superior Court of the District of Columbia has co-equal status with the Supreme Court of the United States?

Whether the District of Columbia Court of Appeals erred in not ruling that the Superior Court of the District of Columbia exceeded its rulemaking power by enacting rules which abridged the Federal Rules of Civil Procedure and denied the Petitioners due process and equal protection of the law?

Whether Titles 11, Sections 743 and 946 of the District of Columbia Code, as amended, are unconstitutional?

Whether or not Petitioners' rights to appellate due process were violated when the only Appellate Judge to hear all of Petitioner's petitions dismissed these petitions, then recused himself?

PARTIES TO THE ACTION

Petitioners are civil litigants, either appearing as plaintiffs or defendants, in the Superior Court of the District of Columbia.

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1. Amendment V, United States Constitution 1a

2. Amendment XIV, United States Constitution 1a

3. Title 11, Section 743, District of Columbia Code (1981 Edition) 1a

4. Title 11, Section 946, District of Columbia Code (1981 Edition) 1a

5. Rule 1 of the Federal Rules of Civil Procedure 2a

6. Order dated March 6, 1985, denying Petitioners' Petition for En Banc Consideration 3a

7. Order dated March 5, 1985, denying Petitioners' Petition for En Banc Consideration 5a

8. Petition for En Banc Consideration filed by Irben Edwards and James Hardy 7a

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10. Order dated January 28, 1985, denying Petition for Writ of Mandamus filed by Irben Edwards and James Hardy 11a

11. Order dated January 7, 1985, denying Petition for Writ of Mandamus filed by Linda Sowells and Florence M. Stansel 12a

12. Designation of Record Below 14a

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Amendment XIV, United States Constitution 2

Title 28, Section 1257, United States Code 2

Title 28, Section 2072, United States Code 2

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Title 11, Section 705, District of Columbia Code (1981 Edition) 4a

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Internal Operating Procedures, District of Columbia Circuit Court of Appeals, Part 4 ..... 4a

(The provisions of the District of Columbia Code are contained in the Appendix, with the exception of Title 11, Section 705.)

2. *Rules Involved*

Rules 1 and 16 of the Federal Rules of Civil Procedure 2, 4

Rules 16-I and 40-II of the Superior Court of the District of Columbia Rules of Civil Procedure 2, 3, 4

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(The provisions of F.R.C.P. 1 are contained in the Appendix.)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No.

IRBAN EDWARDS, *et al.*,
Petitioners,

v.

JOSEPH M. HANNON, etc.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

OPINIONS BELOW

On March 7, 1985 and on March 6, 1985, the District of Columbia Court of Appeals denied Petitioners' request for en banc consideration of the authority of the Superior Court of the District of Columbia to promulgate rules which conflict with, impinged upon, and subordinate the Federal Rules of Civil Procedure to the Superior Court Rules of Civil Procedure. The Orders and Petitions are contained in the Appendix.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257 and Rule 19(1) of the Rules of the Supreme Court of the United States. Additionally, the constitutionality of Title 11, Sections 743 and 946 of the District of Columbia Code may be drawn into question and Title 28, Section 2403 of the District of Columbia Code may be applicable as no lower court has certified to the Attorney General the fact that the constitutionality of such acts of Congress were drawn into question.

The question was raised by mandamus proceedings and the petitions for mandamus were denied by the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

The Superior Court of the District of Columbia has the inherent power to promulgate its own rules and has done so. *Courthouse Practice and Procedure,* District of Columbia Court, 1979, as amended.

Petitioners alleged that their due process rights and right to equal treatment under law were denied by improper orders based upon invalid court rules, and an unconstitutional statute.

The Supreme Court of the United States promulgates the Federal Rules of Civil Procedure; the District of Columbia Superior Court promulgates those rules which modify and amend the Federal Rules of Civil Procedure, *Title 11, Section 946 of the District of Columbia Code, 1981, as amended.* The District of Columbia Court of Appeals promulgates rules which amend or modify the Federal Rules of Appellate Procedure, *Title 11, Section 743 of the District of Columbia Code, 1981, as amended.*

The Petitioners have complained that the promulgation by the District of Columbia Superior Court of Civil Rules

16-I and 40-II is an improper delegation of authority, is in derogation of and subordinates Rules 1 and 16 of the Federal Rules of Civil Procedure.

These Superior Court Rules violate Petitioners' due process rights and deny them the opportunity for a fair trial. Such promulgation is an unlawful delegation of legislative and judicial authority. Congress cannot grant to the local Courts the power to adopt rules which enlarge, modify or omit any substantive rights. In fact, Congress has withheld such power from the Supreme Court of the United States.[1]

REASONS FOR GRANTING WRIT

The Superior Court of the District of Columbia with the tacit approval of the District of Columbia Court of Appeals has used Title 11, Section 946 of the District of Columbia Code, as amended to give them authority to promulgate local rules which conflict with the Federal Rules and which deny Petitioners those federally created rights guaranteed by the Federal Rules of Civil Procedure. The promulgation of these rules is in derogation of the supervisory power of the appellate court and a statute granting such authority is in violation of the Separation of Powers Doctrine, reverses responsibility of supervision through legislation, and is otherwise unconstitutional.

Until the Supreme Court lays down ground rules, state and lower courts have open season to promulgate rules changing the Federal and Appellate Rules of Civil Procedure and are free to tamper with these Federal Rules of Civil and Appellate Procedure, and encroach upon the jurisdiction of the Supreme Court of the United States of America.

---

[1]28 USCA Sec 2072.

CONCLUSION

Congress delegated legislative authority to the District of Columbia Superior Court to promulgate local rules which modify and amend the Federal Rules of Civil Procedure, and Superior Court Rules 16-I and 40-II are in conflict with and have subordinated rules 1 and 16 of the Federal Rules of Civil Procedure to these local rules, and the District of Columbia Court of Appeals has affirmed this procedure. It is respectively requested that this Court issue certiorari to the District of Columbia Court of Appeals to set aside the District of Columbia Superior Court rules in conflict with the Federal Rules of Civil Procedure, to declare *Titles 11, Sections 743 and 946, 1981 as amended,* unconstitutional and take any other action that may seem just and proper in the protection of the rights of the Petitioners.

Respectfully submitted,

WILLIAM A. BURLESON
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Attorney for Petitioners

APPENDIX A

Amendment V. United States Constitution

. . . nor be deprived of life, liberty, or property, without due process of law.

Amendment XIV. United States Constitution.

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the law.

Title 11, Section 743, District of Columbia Code (1981 Ed.)

§ 11-743. Rules of court.

The District of Columbia Court of Appeals shall conduct its business according to the Federal Rules of Appellate Procedure unless the court prescribes or adopts modifications of those Rules. (July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-743.)

Title 11, Section 946, District of Columbia Code (1981 Ed.)

§ 11-946. Rules of court.

The Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (except as otherwise provided in title 23) unless it prescribes or adopts rules which modify those Rules. Rules which modify the Federal Rules shall be submitted for the approval of the District of Columbia Court of Appeals, and they shall not take effect until approved by that court. The Superior Court may adopt and enforce other rules as it may deem necessary

without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules. The Superior Court may appoint a committee of lawyers to advise it in the performance of its duties under this section. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-946.)

Federal Rules of Civil Procedure

Rule 1

SCOPE OF RULES

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED
MAR 6 -1985
/s/
Clerk

No. 84-1273

IRBEN EDWARDS, ET AL.,
Petitioners,

v.

HONORABLE JOSEPH M. HANNON,
Judge, Superior Court of the
District of Columbia,
Respondent,

CA15040-81
CA5944-81

BEFORE: Pryor, Chief Judge; Nebeker, Mack, Newman, Ferren, Belson, Terry*, and Rogers, Associate Judges.

ORDER

On consideration of petitioners' petition for en banc consideration, and it appearing that no judge of this court has called for a vote thereon, it is

ORDERED that petitioners' petition for en banc consideration is denied.

PER CURIAM

*Associate Judge Terry has recused himself from participating in this case.

Copies to:

Honorable Joseph M. Hannon

Clerk, Superior Court

Andrew Chopivsky, Esquire
1300 19th Street, N.W.
Washington, D.C. 20006

William A. Burleson, Esquire
1000 Pennsylvania Avenue, S.E.
¼washington, D.C. 20003

Robert W. Goodson, Esquire
1919 Pennsylvania Avenue, N.W., #700
Washington, D.C. 20006

Charles L. Reischel, Esquire
Deputy Corporation Counsel

cwc

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

No. 85-11

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED
MAR 15 -1985
/s/
Clerk

LINDA SOWELLS, ET AL.,
Petitioners,

v.

HONORABLE JOSEPH M. HANNON,
Respondent,

BEFORE: Pryor, Chief Judge; Nebeker, Mack, Newman, Ferren, Belson, Terry, and Rogers, Associate Judges.

ORDER

On consideration of petitioners' petition for rehearing and for rehearing en banc, and it appearing that no judge of this court has called for a vote thereon, it is

ORDERED that petitioners' petition for rehearing en banc is denied.

PER CURIAM

Copies to:

Andrew Chopivsky, Esquire
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

James P. Schaller, Esquire
One Lafayette Center
1120 20th Street, N.W.
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Washington, D.C. 200036

Joseph M. Cahill, Esquire
1333 H Street, N.W.
Suite 600
Washington, D.C. 20005

David L., Hilton, Esquire
3132 North 10th Street
Suite 200
Arlington, Virginia 22201

acg

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

No. 84-1273

IRBEN EDWARDS, ET AL.,
Petitioners,

v. CA15040-81
HONORABLE JOSEPH M. HANNON, CA5944-81
Judge, Superior Court of the
District of Columbia,
Respondent,

PETITION FOR EN BANC CONSIDERATION

Petitioners allege that they have been denied due process of law because of the invalidity of a rule which was improperly promulgated by the D.C. Superior Court.

The D.C. Superior Court's promulgation of Superior Court rules which modify and amend the Federal Rules of Civil Procedure upon which Superior Court's rules are derived, is an improper delegation of authority to the D.C. Superior Court.

D.C. Superior Court Rule 16-I which has been promulgated by the D.C. Superior Court modifies and alters Superior Court Civil Rule 16 which is derived from the Federal Rules of Civil Procedure.

WHEREFORE, Petitioners request en banc consideration of the Court.

Respectfully Submitted,

/s/

William A. Burleson, #135277
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
(202) 544-4111

/s/

Andrew Chopivsky, #349415
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
(202) 543-5208

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed postage pre-paid this ____ day of _____, 1985 to Robert W. Goodson, Esquire, 1919 Pennsylvania Avenue, N.W., #700, Washington, D.C. 20006 and Charles L. Reischel, Esquire, Deputy Corporation Counsel.

/s/

Andrew Chopivsky

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

Civil Action No. 4562-82
LINDA SOWELLS

and

Civil Action No. 15870-80
FLORENCE M. STANSEL, et al.
Petitioners,

v.

HONORABLE JOSEPH M. HANNON,
Respondent,

APPEAL NUMBER 85-11

PETITION FOR REHEARING AND FOR HEARING EN BANC

The Supreme Court of the United States promulgates the Federal Rules of Civil Procedure. To the extent that the Federal Rules of Civil Procedure apply to the Superior Court for the District of Columbia, the Federal Rules of Civil Procedure are binding on the Superior Court of the District of Columbia, who adopts and derives their rules from these Federal Rules of Civil Procedure.

The authority for the Superior Court for the District of Columbia to promulgate rules which modify, amend or alter the Federal Rules of Civil Procedure is an improper delegation of authority granted to the Superior Court for the District of Columbia.

The promulgation by the Superior court of the District of Columbia of Superior Court Civil Rules 40-II and its

application in derogation of Federal Civil Rule 16 and 1, and its use to deny a right mandated by the rule, has prejudiced the petitioners and had denied them their rights to constitutional due process.

Respectfully Submitted,

/s/ _____

Andrew Chopivsky, #349415
(202) 543-5208

/s/ _____

William A. Burleson, #135277
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
(202) 544-4111

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed postage pre-paid this 30rd day of January, 1985 to: James P. Schaller, Esquire, One Lafayette Center, Suite 300 South, 1120 - 20th Street, N.W., Washington, D.C. 20036; Joseph M. Cahill, Esquire, 1333 H Street, N.W., Suite 600, Washington, D.C. 20005, and David L. Hilton, Esquire, 3132 North 10th Street, Suite 200, Arlington, Virginia.

/s/ _____

Andrew Chopivsky

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

No. 85-11

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED
JAN 28 1985
/s/
Clerk

LINDA SOWELLS, ET AL.,
Petitioners,

v.

CA4562-82

HONORABLE JOSEPH M. HANNON,
Respondent,

BEFORE: Terry and Rogers, Associate Judges.

ORDER

On consideration of petition for writ of mandamus filed by petitioners in the above case, it is

ORDERED that petition for writ of mandamus is denied.

PER CURIAM

Copies to:

Honorable Joseph M. Hannon

Clerk, Superior Court

William A. Burleson, Esquire
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

James P. Schaller, Esquire
1120 20th Street, N.W.
Suite 300 South
Washington, D.C. 20036

cwc

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED
JAN 7 -1985
/s/
Clerk

No. 84-1273

IRBEN EDWARDS, ET AL.,

Petitioners,

v.

CA15040-81
CA5944-81

HONORABLE JOSEPH M. HANNON,
Judge, Superior Court of the
District of Columbia,

Respondent,

BEFORE: Newman and Terry, Associate Judges.

ORDER

On further consideration of petitioners' petition for writ of mandamus and the responsive pleadings of the parties filed with respect thereto, it is

ORDERED that the aforesaid petition be denied.

PER CURIAM

Copies to:

Honorable Joseph M. Hannon

Clerk, Superior Court

Andrew Chopivsky, Esquire
1300 19th Street, N.W.
Washington, D.C. 20006

William A. Burleson, Esquire
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Robert W. Goodson, Esquire
1919 Pennsylvania Avenue, N.W., #700
Washington, D.C. 20006

Charles L. Reischel, Esquire
Deputy Corporation Counsel

cwc

DISTRICT OF COLUMBIA
COURT OF APPEALS

BEFORE: Pryor, Chief Judge; and Mack, Newman, Ferren, Belson, Terry, Rogers, and Steadman, Associate Judges.

ORDER

The Superior Court of the District of Columbia, pursuant to Section 111 of the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Sec. 11-946 (1981), has requested that the effectiveness of the amendments to Federal Rule of Civil Procedure 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 23.1, 24, 25, 26, 27, 28, 30, 31, 32, 34, 35, 36, 37, 38, 41, 43, 44, 44.1, 45, 46, 49, 50, 51, 53, 54, 55, 56, 60, 62, 63, 65, 65.1, 68, 69, 71, 71A, 73, 75, 77, 78, and 81, and Federal Rules of Criminal Procedure 4, 5, 5.1., 6, 7, 10, 11, 12, 12.1, 12.2, 15, 16, 17, 17.1, 20, 21, 24, 25, 26.2, 30, 32, 32.1, 33, 38, 40, 41, 42, 43, 44, 45, 46, 49, and 51 previously stayed by this Court until March 1, 1988, be stayed further with respect to the corresponding Superior Court Rules. It is

ORDERED that the stay of effectiveness of amendments to Federal Rules of Civil Procedure 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 23.1, 24, 25, 26, 27, 28, 30, 31, 32, 34, 35, 36, 37, 38, 41, 43, 44, 44.1, 45, 46, 49, 50, 51, 53, 54, 55, 56, 60, 62, 363, 65, 65.1, 68, 69, 71, 71A, 73,

75, 77, 78, and 81 and Federal rules of Criminal Procedure 4, 5, 5.1, 6, 7, 10, 11, 12, 12.1, 12.2, 15, 16, 17, 17.1, 20, 21, 24, 25, 26.2, 30, 32, 32.1, 33, 38, 40, 40, 41, 42, 43, 44, 45, 46, 49, and 51 until March 1, 1988, is extended with respect to the corresponding Superior Court Rules until December 1, 1988.

AMERICAN SECURITY BANK

VERSUS

FLORENCE M. STANSEL

VOL. II

DATE	COURT CLERK'S MEMORANDUM	JUDGE
3/14/84	Pretrial held - trial set for June 29, 1984.	/SIG./ J. Walton
12-4-84	Case considered of sua-sponte for certification to Civil I calendar, Civil I denied at this time without prejudice to Plaintiff filing a motion	/SIG/ J. Hannon
12-4-84	Notice of above 12-4-84 entry sent this date to David L. Hilton, J. Andrew Chopivsky, Joseph M. Cahill, and William A. Burleson.	
8/9/85	MOTION TO CERTIFY CIVIL I GRANTED. See entry of 12/4/84	/SIG/

/sig/

Judge Hannon

DATE	COURT CLERK'S MEMORANDUM	JUDGE
__ /16/86	Deft. Burleson's opposition to Pl.'s motion to reopen discovery to take deposition of William A. Burleson filed.	
__/_7/86	Motion of Burleson for sanctions is denied. Order filed.	J. Hamlton
__/17/86	Burleson's motion to compel is denied.	J. Hamilton
__/20/86	Motion of Pitt for extension of time to take the deposition of William Burleson is granted. Further ordered that the deposition of William Burleson may be taken by Pl. on or before 10-31-86. Order filed.	J. Hamilton
__/23/86	Notice of deposition to William A. Burleson filed.	
__/30/86	Motion for Protective Order filed.	

11/19/86	Diane Pirfo Ct. Rept. case called for trial. Hamilton Request of David Hilton to withdraw as counsel for defendant. Florence Stansel is granted. Motion to quash subpoena as to Jack Spicer is granted. Pl.'s request to file mtn. in limine is granted. Voir dire heard in Part. Case contd. to 11/20/86 9:30 A.M. for future voir dire.	J.
__/20/86	_____	

SUPERIOR COURT OF THE

DISTRICT OF COLUMBIA

CIVIL DIVISION

AMERICAN SECURITY BANK	:	
	:	
Plaintiff	:	
	:	Case No. CA
	:	15870-80
v.	:	
	:	Judge
	:	Hamilton
WILLIAM A. BURLESON	:	
FLORENCE M. STANSEL	:	
	:	
Defendants	:	

O R D E R

As to the plaintiff's claim against the defendants for reasonable attorneys fees, the Court after review of the entire record in this case including the evidence and arguments of counsel adduced at trial finds that reasonable attorneys fees in this case are $17,678.26.

Accordingly, it is hereby ordered that the Clerk enter judgment in this case as to the plaintiff's complaint against each of the defendants in the amount of: $61,873.91 plus interest at the legal note from the date of that judgment, with costs to the plaintiff to abide that event.

SO ORDERED.

/s/

Eugene N. Hamilton,
Judge

12/11/86

SUPERIOR COURT OF THE

DISTRICT OF COLUMBIA

CIVIL DIVISION

AMERICAN SECURITY BANK	:	
	:	
Plaintiff	:	
	:	Case No. CA
	:	15870-80
v.	:	
	:	Judge
	:	Hamilton
WILLIAM A. BURLESON	:	
FLORENCE M. STANSEL	:	
	:	
Defendants	:	

DEFENDANTS' MOTION FOR A NEW TRIAL

Pursuant to SCR-Civil Rule 59(a), defendants respectfully move this court to set aside the verdict returned by judge and jury in the above-mentioned case and entered into judgment on January 11, 1986 and to grant a new trial. As grounds for the Motion, defendants state the following:

(a) the Court's refusal to grant a continuance of the trial during defendant Burleson's hospitalization resulted in prejudice to the defendants;

(b) defendants' due process right to a fair trial was violated when the Court denied defendants' right of discovery in pursuing his civil RICO claim;

(c) the Court should not have permitted the jury to decide the prime rate of interest that American Security Bank charged its customers;

(d) the Court should have permitted defendants' civil RICO claim to go before the jury for decision rather than finding against defendant as a matter of law.

(e) the Court's award of attorneys' fees to plaintiff's attorneys was

excessive in light of what they had been requesting over the past eight years;

(f) the defendants' were prejudiced by unfair surprise when they learned in the midst of the trial the hostility held by the Superior Court against RICO claims;

(g) the Court should have certified defendants' RICO claims to the Court of Appeals to resolve inconsistent rulings within the Superior Court concerning its jurisdiction over RICO;

(h) the Court should not have given a directed verdict against defendants' counter-claim.

(i) the Court, having found the Plaintiff was liable for breach of contract to Defendant Stansel, should have permitted this issue to go to the jury.

/SIG/

Lawrence D. Huntsman #6189
J. Andrew Chopivsky #349415

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Defendants for a New Trial, together with Memorandum of Points and Authorities in Support and Order, were mailed, postage prepaid, to Dale A. Cooter, Esq., Suite 600, 1333 H Street, N.W., Washington, D.C. 20005, this 22nd day of December, 1986.

/SIG/

Lawrence D. Huntsman #6189
1000 Pennsylvania Ave., SE
Washington, D.C. 20003
(202) 591-2921

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

AMERICAN SECURITY BANK, N.A.	:	
f/k/a AMERICAN SECURITY TRUST CO.	:	
Plaintiff,	:	
	:	CA No.: 15870-80
v.	:	
	:	Judge Hamilton
WILLIAM A. BURLESON & FLORENCE M. STANSEL,	:	(Civil I)
Defendants.	:	

DEFENDANTS' REPLY TO
OPPOSITION FOR NEW TRIAL

Plaintiff states that the Superior Court does not have jurisdiction to try RICO claims and Superior Court policy as enunciated by Judge Curtis E. von Kann on July 31, 1986 in the Memorandum Order ruled that civil RICO claims may not be

maintained in the Superior Court.

Defendants in their Motion for New Trial have pointed out numerous substantive errors committed in the litigation and trial of this case. Defendants' counter-claim has withstood Plaintiff's Motion for Summary Judgment and Motion to Dismiss. Defendants request this court to grant this Motion for New Trial and permit the Defendants to move this matter to the U.S. District Court.

Subsequent to Defendants' Motion for New Trial, Plaintiff attached the Defendant Lawyer's Trust Account for his clients, an account required by the D.C. Court of Appeals with interest payable through the D.C. Bar Association.

Defendants objected to this attachment and filed a copy of his Lawyer's Trust Account and letter from the D.C. Bar Foundation with this court. Defendant was required to borrow money to replenish this Lawyers Trust Account which was condemned on January 30, 1987.

Respectfully submitted,

/s/

Lawrence D. Huntsman,#6189
J. Andrew Chopivsky,
#349415
1000 Pennsylvania Avenue,
S.E.
Washington, D.C. 20003
(202) 250-6255
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 1987, a copy of the foregoing Defendants' Reply to Opposition for New Trial was mailed, postage prepaid, to Dale A. Cooter, Esq., 1333 H Street, N.W., Suite 600, Washington, D.C. 20005.

/s/

Lawrence D. Huntsman,
#6189

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

AMERICAN SECURITY BANK, N.A. f/k/a AMERICAN SECURITY TRUST CO. Plaintiff	:	CA No. 15870-80
v.	:	Judge Hamilton (Civil I)
WILLIAM A. BURLESON and FLORENCE M. STANSEL Defendants	:	

AFFIDAVIT

William A. Burleson states:

I have practiced law for approximately 25 years and acted as counsel for myself and Mrs. Stansel in this case from the time I was sued in 1980. I have prepared and signed the

pleadings, I have deposed the witnesses, and at trial I assisted my counsel in preparing questions for these witnesses and this fact was noted by the trial judge. My attorney had never had a jury trial and he needed my assistance.

The trial judge stated that this was the first RICO case to be tried in the Superior Court and he handed written instructions to the plaintiff's lawyer on how they should defend this case. He denied my three pre-emptory jury strikes, he quashed subpoenas on defendants' witnesses, restricted the defendants' in the prosecution of their RICO claim, and refused to permit the defendants to use the defense that the Note had been discharged and admonished me.

After approximately two days of trial, I became ill and called my private physician, Richard John, M.D., who ordered me taken to the Washington Hospital Center Emergency Room; he had me admitted and I was placed in a ward.

I thought that everyone who examined or treated me was part of the hospital staff; however, I was told the next day by hospital personnel that a doctor had examined me the night before. This doctor never identified himself nor stated he was not a member of the hospital staff. A hospital doctor complained to me about having been ordered to testify in court that day without having an authorization from me.

The next day, I was examined by a psychiatrist, who stated he did not know

why he was sent to examine me, nor did he know who sent him. For five days I was treated by the hospital staff as if I had committed a crime and was placed in a single room with the door closed.

I was scheduled for an additional week of health maintenance and hospital care in an attempt to control my diabetes and heart disease. However, after six days of admission, the hospital was notified that the court would be sending a doctor back for another examination of me; the hospital officials stated they wanted no further involvement in this case, told me to get ready to leave immediately, gave me medications, prescriptions and escorted me to the front door. I was ordered to refrain from practicing law for the next thirty days.

During my hospital confinement, the trial proceeded without my presence, I was not able to participate or assist my attorney nor to observe and hear the witnesses that testified, and was told that if I wanted to know what the witnesses testified to, I could buy a copy of the transcript and read it.

While at home in bed, I was called and told that the court had ordered me to appear in court immediately and upon arriving there I was handed a subpoena. I testified over a period of two days and during periods I was permitted to go into the witness room to lay down on the floor. After testifying, I was permitted to leave and go back home.

I never authorized the disclosure of my medical information and my private

physician was never contacted. At no time did I waive my patient/doctor privilege.

My attorney told me that he had been appointed by the trial judge as the spokesman between the court and the hospital authorities.

/s/ William A. Burleson

Subscribed to and sworn to before me this 22nd day of December, 1986.

/s/ Jeanne M. Brewer
Notary

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

Calendar No. 56-j Civil No. 15870-80

AMERICAN VS. BURLESON ET AL

Plaintiff Defendant

The above-captioned civil action has been set on the JURY calendar for May 28, 1985 at 9:30 A.M. Should a conflict exist, please observe the following: Where all parties consent, a new date may be obtained by notifying the Civil Assignment Office by phone with 10 days of mailing of this notice. All requests made thereafter and all opposed requests must be made by appearing before the Civil Calendar Control Judge. The failure of counsel to seek a new date within 10 days

is a representation to the Court that no conflict exists.

REPORT TO ASSIGNMENT OFFICE

JOSEPH WEST
Assignment
Commissioner
J-82178

CV(11)-584/Mar. 78

1750

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

AMERICAN SECURITY BANK, N.A.	:	
f/k/a AMERICAN SECURITY TRUST CO.	:	
Plaintiff,	:	
	:	CA No.: 15870-80
v.	:	
	:	Judge Shuker
WILLIAM A. BURLESON & FLORENCE M. STANSEL,	:	(Civil I)
Defendants.	:	

ORDER

This matter is before the Court on defendants' Motion to Amend Answer and Counterclaim (to raise a RICO violation as a new cause of action herein) and plaintiff's opposition thereto. Although the Court is very sympathetic to the tortured chronology of this case's various

peregrinations as detailed in plaintiff's opposition, it is nevertheless the law in this jurisdiction that amendments are to be liberally granted unless they interfere with another party's substantial rights. In light of the fact that trial is still more than seven months away, it appears that it would be an abuse of this Court's discretion to deny defendants' motion.

Accordingly, the motion to amend is granted and the amended answer and counterclaim are deemed filed this date. Since discovery was previously closed by an order of this Court, the only exception to that order shall be that plaintiff may have appropriate discovery concerning defendants' new allegations;

said discovery shall close on August 29, 1986; otherwise discovery remains closed.

3/26/86
DATE

SIG
JUDGE

SUPERIOR COURT OF THE

DISTRICT OF COLUMBIA

CIVIL DIVISION

AMERICAN SECURITY BANK	:	
	:	
Plaintiff	:	
	:	Civil Action
	:	15870-80
v.	:	
	:	
F. M. STANSEL, et al.	:	
	:	
Defendants	:	

ORDER

The Court having considered the Opposition of Defendants to Plaintiff's Motion to Dismiss, it is this 5th day of June, 1986,

ORDERED, That Plaintiff' Motion to Dismiss is herewith denied. See: Gulf Offshore Co. v. Mobile Oil Corp., 453 U.S. 473(1981).

/s/

E. HAMILTON
JUDGE

Mail Copies to:

David L. Hilton, Esquire
8303 Arlington Blvd.
Suite 102
Fairfax, Va. 22031

Dale A. Cooter, Esquire
1333 H St., N.W., Suite 600
Washington, D.C. 20005

Andrew Chopivsky, Esquire
2513 P St., N.W.
Washington, D.C. 20007

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
Civil Division

WILLIAM A. BURLESON,	)	
	)	
Plaintiff,	)	
	)	CA 4860-85
v.	)	LT 21653-85
	)	
GUEST SERVICES, INC., et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM ORDER

Before this Court is plaintiff's motion to reconsider the March 27, 1986 order dismissing plaintiff's civil RICO and Sherman Act claims. Upon consideration of plaintiff's motion and defendant Guest Services, Inc.'s opposition thereto, the Court has determined that the motion must be denied.

As to the Sherman Act claim, decision is quite easy since, as noted by the Court in the March 27, 1986 order, it has been consistently held that that Act creates a statutory, not common law, cause of action which may only be enforced in a United States District Court, Blumenstock Bros. v. Curtis Publishing Co., 252 U.S. 436, 440 (1920), Armstrong v. Taco Time International, Inc., 30 Wash. App. 538, 635 P.2d 1114, 1119-20 (1981), and plaintiff offers nothing to warrant a departure from that well-settled principle.

As to the RICO claim, the matter is more complex. Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473 (1981) teaches, of course, that there is an initial presumption that state and federal courts

have concurrent jurisdiction over any federal claim. But that presumption may be overcome "by unmistakable implication from legislative history or by a clear incompatibility between state-court jurisdiction and federal interests." 453 U.S. at 478.

The question here is whether the presumption is rebutted in the case of civil RICO claims. That question has not been decided by the District of Columbia Court of Appeals, nor in any reported federal appellate decisions. Federal district courts have gone both ways. Compare Chas. Kurz Co. v. Lombardi, 595 F.Supp. 373, 381 n. 11 (E.D.Pa. 1984) and Luebke v. Marine National Bank of Neenah, 567 F.Supp. 1460, 1462 (E.D.Wis. 1983) (concurrent jurisdiction) with Kinsey v.

Nestor Exploration, Ltd., 604 F.SUpp. 1365, 1371 (E.D.Wa. 1985), and County of Cook v. Midcon Corp., 574 F.Supp. 902, 911 (N.D.Ill. 1983) (exclusive jurisdiction), aff'd on other grounds, 773 F.2d 892 (7th Cir. 1985).

The weight of authority among state court decisions seems to be that a civil RICO claim may only be enforced in federal court. See, for example, Main Rusk Associates v. Interior Space Constructors, Inc., ____ Tex. App. _____, 699 S.W.2d 305, 307 (1985); Levinson v. American Accident Reinsurance Group, 503 A.2d 632, 635 (Del. Ch. 1985); Maplewood Bank and Trust Co. v. Acorn, Inc., 207 N.J. Super. 590, 504 A.2d 819 (1985); Greenview Trading Co., Inc. v. Hershman & Leicher, P.C., 108 A.D.2d 468, 489 N.Y.S.2d 502,

503 (1985).

Notwithstanding my great respect for my brother Hamilton who has denied a motion to dismiss a counterclaim which includes a RICO claim, American Security Bank v. Stansel, No. 15870-80 (D.C. Super. Ct.), the reasoning of Judge Leighton in County of Cook v. Midcon Corp., supra, and the additional factors discussed in the four state court decisions cited above persuades me that state courts do not have concurrent jurisdiction over civil RICO claims.

The Racketeer Influenced and Corrupt Organizations Act created federal rights of action which have spawned a great number of civil lawsuits. State courts, many of which are already heavily backlogged, should not lightly open their

doors to new waves of litigation which appear designed for resolution by federal courts. In the District of Columbia, the case for a rule of federal exclusivity is particularly compelling since this Court sits literally across the street from a federal district court whose civil caseloads and processing times are considerably less than those here.

Consequently, this Court again rules that civil RICO claims may not be maintained in Superior Court. Thus it is this 31st day of July, 1986, hereby ORDERED that plaintiff's Motion to Reconsider is denied.

/s/ CURTIS E. von KANN
Judge

Copies to:

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John Berthau
6308 Balfour Drive
West Hyattsville, Md. 20782

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
Civil Division

AMERICAN SECURITY BANK	)	
	)	
Plaintiff,	)	
	)	Civil Action
	)	No. 15870-)80
	)	
v.	)	
	)	
F. M. STANSEL, et al.	)	
	)	
	)	
Defendants.	)	
	)	

O R D E R

The Court having considered the Opposition of Defendants to Plaintiff's Motion to Dismiss, it is this 5th day of June, 1986,

ORDERED, That Plaintiff's Motion to Dismiss is herewith denied. See: Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473 (1981).

/s/

E. Hamilton,
JUDGE

Mail Copies to:

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8303 Arlington Boulevard
Suite 102
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Dale A. Cooter, Esquire
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Washington, D.C. 20005

Andrew Chopivsky, Esquire
2513 P Street, N.W.
Washington, D.C. 20007

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 87-262

FLORENCE M. STANSEL and WILLIAM A. BURLESON, APPELLANTS,

v.

AMERICAN SECURITY BANK, APPELLEE.

No. 87-263

AMERICAN SECURITY BANK, APPELLANT,

v.

FLORENCE M. STANSEL and WILLIAM A. BURLESON, APPELLEES.

Appeals from the Superior Court of the District of Columbia

(Hon. Eugene N. Hamilton, Trial Judge)

Judgment entered this date

(Argued June 2, 1988 Decided September 23, 1988)

William A. Burleson for appellants cross-appellees Stansel and Burleson.

Dale A. Cooter, with whom *Joseph M. Cahill* and *Donna S. Mangold* were on the brief, for appellee cross-appellant American Security Bank.

Before TERRY, ROGERS, and STEADMAN, *Associate Judges.*

TERRY, *Associate Judge*: American Security Bank ("the Bank") brought this action against Florence Stansel and William Burleson, seeking to recover $20,000 on a promissory note, plus interest and attorney's fees. Stansel and Burleson denied the debt and filed counterclaims alleging fraud, breach of contract, and violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. §§ 1961-1968 (1982 & 1987 Supp.). The trial court granted directed verdicts for the Bank on the counterclaims, and the jury thereafter awarded the Bank $44,195.65, including interest, on its underlying claim on the promissory note. In two subsequent orders, the court granted the Bank $17,678.26 in attorney's fees but denied a motion by the Bank for monetary sanctions against appellees under Super. Ct. Civ. R. 11. Stansel and Burleson appeal, arguing that the trial court erred in granting the directed verdicts, in receiving testimony during Burleson's absence from the courtroom, and in allowing itself to be improperly influenced by the Bank's counsel at trial. They also maintain that the award of attorney's fees was excessive. The Bank, in its cross-appeal, challenges the award of fees as inadequate and asserts that the trial court erred in denying its request for Rule 11 sanctions.

We reject all of Stansel and Burleson's claims of error and affirm the judgment on the verdict. With respect to the two post-trial orders which are the subject of the Bank's cross-appeal, we are unable to determine from the record either the adequacy of the fee award or the correctness of the court's denial of the Rule 11 motion. We therefore vacate the post-trial orders and remand the case to the trial court for further proceedings with respect to those two matters.

I

The Bank filed this action against Stansel and Burleson in October 1980, seeking to recover on a promissory note for $20,000, with interest at the prime rate plus four percent (as specified in the note), plus attorney's fees. The note at issue, executed on March 12, 1979, represented the third renewal of another note executed a year earlier by Stansel, with Burleson as an accommodation signer, to obtain a $20,000 loan from the Bank for the down payment on a piece of real property. The note upon which the suit was based contained a provision allowing the Bank to recover from the makers "costs of collection, including a reasonable attorney's fee." From the time the original note was executed in March 1978 until the filing of the suit in October 1980, Stansel and Burleson had failed to repay any of the principal [1] and had ignored a succession of demand letters sent by the Bank.

Stansel and Burleson answered by denying the debt, claiming partial satisfaction, and alleging *inter alia* fraud, deceit, and illegality of the note. They also counterclaimed for breach of contract. After five years of litigation, the defendants added a new counterclaim under the RICO Act, alleging that the Bank had fraudulently charged them excessive interest rates and had engaged in an illegal kickback and tax fraud scheme which it attempted to cover up by forgery. Stansel and Burleson presented insufficient evidence at trial to support any of their counterclaims, and as to them the trial court granted directed verdicts for the Bank. The court, however, denied the Bank's motion for a directed verdict on

[1] They alleged, however, that they had paid some of the interest, which the Bank disputed. The jury, by its verdict, evidently agreed with the Bank.

its underlying claim on the note, allowing the jury to decide the meaning of "prime rate."

The jury returned a verdict against Stansel and Burleson in the amount of $44,195.65, the precise sum that the Bank had sought. After a post-trial hearing, the court, without explanation, awarded attorney's fees to the Bank in the amount of $17,678.26, exactly forty percent of the jury verdict and substantially less than the bank had requested. The Bank thereafter moved to amend the judgment under Super. Ct. Civ. R. 59(e) and for monetary sanctions under Super. Ct. Civ. R. 11, but the court denied both requests.

II

Stansel and Burleson contend that the trial court erred in allowing three of Stansel's witnesses to testify in the absence of Burleson, who had been co-counsel for both himself and Stansel before trial. On the third day of trial, as Stansel was completing her case, Burleson was absent from the courtroom because of illness. Upon request, the trial court granted a short continuance for Burleson but ordered Stansel first to complete her own case by presenting her last three witnesses. Burleson now maintains that this ruling prejudiced him, since he was an important witness and counsel in the case and had a right to be present during the other witnesses' testimony. We disagree. Burleson's presence was not so important or material at this particular point in the trial that his absence resulted in prejudice. *See, e.g., Etty v. Middleton*, 62 A.2d 371, 373 (D.C. 1948); *Cornwell v. Cornwell*, 73 App. D.C. 233, 235-236, 118 F.2d 396, 398-399 (1941). The three witnesses who testified were part of Stansel's case, not Burleson's, and the trial court expressly allowed Burleson to recall one significant witness

himself when he returned to trial and began his own case. Moreover, his request for a continuance was granted, and he eventually testified in support of his own claims against the Bank. Thus Burleson was not deprived of an opportunity to be heard or to present an effective defense to the Bank's claims against him. *See Feaster v. Feaster*, 359 A.2d 272, 273 (D.C. 1976); *Bernard's Fur Shop, Inc. v. DeWitt*, 102 A.2d 462, 464 (D.C. 1954); *Keister v. McDavid*, 76 A.2d 776, 778 (D.C. 1950). Indeed, the trial court specifically allowed the witnesses' testimony to continue in Burleson's absence because it was worried about the detrimental effects of further delay on the jury's attitude toward Burleson. We find no reversible error.[2]

Stansel and Burleson also challenge the granting of directed verdicts on their counterclaims for breach of contract and violation of the RICO statute. As to their contract claim, they contend that they presented sufficient evidence to prove that the Bank breached an enforceable oral agreement, collateral to the underlying note, to provide additional loans to Stansel for renovation and permanent financing of the property she had purchased. They also assert that the note was not an integrated contract and so could be modified by additional financing conditions. As to their RICO claim, Stansel and Burleson maintain that they presented sufficient evidence to allow the jury to decide whether the Bank engaged in inter-

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[2] That Burleson was also co-counsel for both himself and Stansel before trial is of some significance, but does not require reversal absent demonstrable prejudice. *See Wynn v. Washington*, 53 A.2d 275, 276 (D.C. 1947). There was no prejudice here because both appellants were represented during the testimony on contested issues, and because Burleson was allowed to recall an important witness when he returned to help his counsel in impeachment.

state racketeering activities by planning an unlawful scheme of kickbacks from the renovation financing and by charging fraudulent and excessive interest rates on its loan. Reviewing the evidence in the light most favorable to the defendants, *see Vassiliades v. Garfinckel's, Brooks Brothers, Miller & Rhoades, Inc.*, 492 A.2d 580, 586 (D.C. 1985), we affirm the directed verdicts.

Stansel and Burleson failed to adduce evidence sufficient to show that a separate oral agreement existed committing the Bank to provide funding for Stansel's renovation and permanent financing. They presented no proof that the Bank went beyond mere preliminary discussions and actually offered such funding. *See* RESTATEMENT (SECOND) OF CONTRACTS § 26 (1981). Neither defendant offered evidence of any specific terms of the alleged agreement, such as the exact amount of the loans, the interest rates, terms of payment, or manner of performance. Thus their claim of breach of contract fails for lack of certainty of the contract's terms. *See Craig v. Acacia Mutual Life Insurance Co.*, 88 A.2d 184, 185 (D.C. 1952); *Maurice Electrical Supply Co. v. Anderson Safeway Guard Rail Corp.*, 632 F. Supp. 1082, 1087 (D.D.C. 1986); RESTATEMENT, *supra*, § 33.[3]

The defendants also failed to make a *prima facie* showing under the RICO Act of either the alleged kickback scheme or the fraudulent interest scheme. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985); *Klapper v. Commonwealth Realty Trust*, 657 F. Supp. 948, 953 (D. Del. 1987); 18 U.S.C. §§ 1962 (c), 1964 (c). First, they did not establish that the Bank committed either of

[3] We therefore need not decide whether the promissory note, which appeared on its face to be a complete and integrated contract, could be modified by a collateral agreement. *See* 4 WILLISTON, CONTRACTS § 644, at 1119-1120 (3d ed. 1961).

the federal crimes they alleged, mail fraud[4] and wire fraud.[5] Their evidence consisted only of vague allegations and surmises, unsupported by specific proof that the Bank engaged in these activities or in any type of racketeering activity as defined in 18 U.S.C. § 1961 (1). Furthermore, even assuming that their allegations were true, Stansel and Burleson made no showing whatever that the Bank's isolated actions constituted a pattern of racketeering. *See Sedima, supra,* 473 U.S. at 496 n.14; *Tellis v. United States Fidelity & Guaranty Co.,* 826 F.2d 477, 478-479 (7th Cir. 1987); *Torwest DBC, Inc. v. Dick,* 810 F.2d 925, 928-929 (10th Cir. 1987). Finally, Stansel and Burleson presented no evidence that any allegedly improper conduct by a bank employee implicated the Bank. This was a critical omission. That an employee violates the statute does not necessarily mean that his or her employer does so as well, absent proof of the employee's authority and the involvement of the employer. *See United States v. Jannotti,* 729 F.2d 213, 226 (3d Cir.), *cert. denied,* 469 U.S. 880 (1984); *Banque Worms v. Luis A. Duque Pena e Hijos, Ltda.,* 652 F. Supp. 770, 772-773 (S.D.N.Y. 1986). The trial court properly refused to send the RICO claims to the jury.[6]

Finally, Stansel and Burleson contend that the court was improperly influenced in its rulings by the Bank's

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[4] 18 U.S.C. § 1341 (1982).

[5] 18 U.S.C. § 1343 (1982).

[6] In these circumstances we need not decide whether the Superior Court has concurrent jurisdiction, together with the United States District Court, over a claim filed under the federal RICO statute. *See Lou v. Belzberg,* 834 F.2d 730, 735-739 & n.3 (9th Cir. 1987), *cert. denied,* 108 S. Ct. 1302 (1988). Even assuming that the Superior Court had jurisdiction, the defendants did not prove a RICO violation.

trial counsel, citing five instances of the supposed improper influence. We find no merit whatever in this contention. At bottom it is nothing more than a complaint that the trial court made some rulings with which they did not agree. In each of the cited instances, either the court was fully justified in its ruling or Stansel and Burleson have failed to show that they were in any way prejudiced. Indeed, the record is full of instances in which the court made rulings favorable to them over the objections of the Bank. The only basis for the defendants' claim of undue influence is the fact that the court ruled against them on several occasions. This is not enough to sustain their claim.

III

In its cross-appeal the Bank contends that the trial court erred in granting it a fee award that was manifestly inadequate in light of the actual cost of litigation. It notes that the court simply awarded a flat forty percent of the jury's verdict without considering any factors, such as the defendants' dilatory tactics, which complicated an otherwise simple collection case. The Bank also challenges the court's denial of Rule 11 sanctions for the same alleged harassment and bad-faith efforts by the defendants to delay the judicial process. Stansel and Burleson respond that the fee award was excessive because it was based on a judgment already augmented by a large amount of interest. They also assert that their counterclaims were presented in good faith and were documented to the extent to which discovery was allowed to them.

A

Because the promissory note expressly provided for reasonable attorney's fees incurred as a cost of collection,

a fee award to the Bank was entirely appropriate. *Sundown, Inc. v. Canal Square Associates*, 390 A.2d 421, 430 (D.C. 1978); *F.W. Bolgiano & Co. v. Brown*, 333 A.2d 674, 675 (D.C. 1975). From the record before us, however, we cannot tell how the trial court calculated the amount it granted to the Bank; consequently, we cannot determine whether the award was reasonable. Since it was exactly forty percent of the jury verdict, however, a fair question is raised whether the trial court determined the fee according to the required method, namely, by multiplying the number of hours reasonably spent by a reasonable hourly fee to reach a "lodestar" figure, which is then adjusted by a variety of factors. *See, e.g., General Federation of Women's Clubs v. Iron Gate Inn, Inc.*, 537 A.2d 1123, 1130 (D.C. 1988); *Ungar v. District of Columbia Rental Housing Commission*, 535 A.2d 887, 892 (D.C. 1987); *District of Columbia v. Hunt*, 525 A.2d 1015, 1016 (D.C. 1987); *see also F.W. Bolgiano & Co., supra*, 333 A.2d at 675 (routine allowance of ten percent attorney's fees for suit on promissory note may not be a reasonable fee award). Before we can rule on the validity of the award, that question must be answered.

We therefore vacate the fee award and remand this case to the trial court, directing it either to recalculate the award using the "lodestar" method or to explain, on the record, how it reached the forty percent figure. Only then can we determine whether the court abused its discretion in computing the amount of attorney's fees. *See General Federation of Women's Clubs v. Iron Gate Inn, Inc., supra*, 537 A.2d at 1129; *Ungar v. District of Columbia Rental Housing Commission, supra*, 535 A.2d at 890; *F.W. Bolgiano & Co., supra*, 333 A.2d at 675. *See generally Johnson v. United States*, 398 A.2d 354, 364-365 (D.C. 1979). In either event, the trial court

should decide anew whether the provision in the promissory note allowing for reasonable attorney's fees as costs of collection also encompasses the costs incurred by the Bank in defending itself against Stansel and Burleson's counterclaims. *See Kudon v. f.m.e. Corp.*, No. 87-848, slip op. at 10-11 (D.C. September 16, 1988); *Ochs v. L'Enfant Trust*, 504 A.2d 1110, 1118-1119 & n.7 (D.C. 1986).[7]

B

Similarly, in the absence of a sufficient record, we cannot determine whether the trial court abused its discretion in denying the Bank's motion for Rule 11 sanctions. Rule 11 provides in pertinent part:

> The signature of an attorney or party [on a pleading, motion, or other paper filed with the court] constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or

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[7] The trial court did rule that the Bank could recover, under the terms of the note, "whatever attorney's fees may have arisen" in defending against the counterclaims. Very recently, in *Kudon v. f.m.e. Corp., supra,* slip op. at 10, this court listed four factors to be considered "in determining whether a party requesting an award of attorneys' fees pursuant to a contract provision is entitled to a fee recovery for defending a claim by the party opposing payment of such fees" —the precise situation we have here. Since the *Kudon* decision did not exist at the time the court made its ruling, and since we are remanding the case anyhow for recalculation of the fee award, we think it would be appropriate for the court to take a fresh look at this issue in light of *Kudon.*

> reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, *shall impose* upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee. [Emphasis added.]

We interpret the rule in the same manner as the United States Court of Appeals read the corresponding federal rule in *Westmoreland v. CBS, Inc.*, 248 U.S. App. D.C. 255, 261-262, 770 F.2d 1168, 1174-1175 (1985).[8] That is, we hold that the trial court has broad discretion, in the first instance, to determine whether there has been a violation of the rule by a party or by counsel. Once such a violation is found, however, the court *must* impose "an appropriate sanction" under the rule; it has no discretion to refrain from sanctioning an offending party or attorney.

The trial court issued a one-sentence order denying the Bank's motion for Rule 11 sanctions, without any explanation of its reasons. It is not clear from this order, or from anything else in the record, whether the court

[8] Because the Superior Court rule is virtually identical to Fed. R. Civ. P. 11, with only one small difference not relevant here, we may consider federal cases interpreting the federal rule as "persuasive authority in interpreting [the local rule]." *Vale Properties, Ltd. v. Canterbury Tales, Inc.*, 431 A.2d 11, 13 n.3 (D.C. 1981) (citations omitted).

recognized that it had any discretion under the rule, whether it was aware of the limits on that discretion imposed by the rule, or whether it purported to exercise its discretion in ruling on the motion. *See Johnson v. United States*, *supra*, 398 A.2d at 363-364. Thus we cannot determine whether the court's ruling was correct or incorrect. In these circumstances, and considering that not until this opinion have we adopted the reasoning of the *Westmoreland* case in construing Rule 11, we vacate the order and direct the court on remand to reconsider the Rule 11 motion *de novo* in light of *Westmoreland*, and to state on the record its reasons for granting or denying the motion in a manner consistent with *Johnson*.

IV

The trial court's judgment on the merits of the Bank's claim on the promissory note is hereby affirmed. The post-trial orders awarding the Bank $17,678.26 in attorney's fees and denying the Bank's motion for sanctions under Super. Ct. Civ. R. 11 are vacated, and this case is remanded to the trial court for further proceedings consistent with this opinion.

Affirmed in part,
vacated and remanded in part.

DISTRICT OF COLUMBIA
COURT OF APPEALS

No: 87-263	*	
AMERICAN SECURITY	*	
BANK,	*	
APPELLANT,	*	
	*	
vs.	*	CASE NO.
	*	CA 15870-80
WILLIAM A. BURLESON,	*	
et. al.,	*	
and	*	
	*	
No. 87-262	*	
FLORENCE M. STANSEL,	*	
et. al.	*	
APPELLANTS,	*	
	*	
v.	*	CASE NO.
	*	CA 15870-80
AMERICAN SECURITY	*	
BANK	*	
APPELLEE	*	

PETITION FOR REHEARING
AND FOR HEARING
EN BANC

I

On page two of this Courts Opinion [opinion attached], the Court stated: "We

are unable to determine from the record either adequacy of the fee award or the correctness of the Court's denial of the Rule 11 Motion."

Upon reading this opinion, the undersigned called the Superior Court Reporter's Office and was referred to Margaret Miller, who had transcribed the trial court's proceedings on December 5, 1986, concerning the fee award and the Rule 11 Motion. Ms. White stated that she had in fact taken down these proceedings and that Cooter and Gell had previously ordered and paid for the transcript of these proceedings. I told her I had ordered and paid for over 882 pages of trial transcript to Diane Pirfo and wondered why this days transcript was not put in the Record. She stated she would

discuss this with Ms. Pirfo.

I obtained a copy of this transcript on October 4, 1988, and even though Defendant-Appellants did not designate this days Court transcript, I feel that I have an obligation to deposit it with this Court, and to request this Court to make it a part of the Record.

The Plaintiff Bank designated all pleadings, exhibits, and the trial transcript. Defendants have attempted to place this entire record before the court, including the pleadings, depositions, court exhibits, trial testimony, and the transcript of the summary judgement hearing in court room 9 on November 3, 1982.

On page 6 of this opinion the court states that neither defendant offered

evidence of any specific terms of the alleged agreement, such as the exact amount of the loan, the interest rates, terms of payment, or manner of performance.

However, the trial court stated on Wednesday, December 3, 1986, [trial transcript p-89 L-11] that "You can find the contract between Ms. Stansel and the Bank, where by the Bank says that they would loan her certain money, so forth because she said that. She said that was -- her testimony, that the Bank, Mr. Dean who had the apparent authority to do that, said that he would do that; and there is other corroborative evidence that the bank had said that from Mr. McCracken's notes, that was to Ms. Stansel, not Mr. Burleson . . . The breach of contract would flow to

Ms. Stansel, of course . . ." [Mr. McCracken's notes are listed in the Record 239 and Court exhibits, Exhibit 11. Copies of these notes are on pages 44, 45, 47, and 48 of the Supplemental Record.]

On July 17, 1987, counsel received a letter from the Acting Clerk of the Court of Appeals stating the complete record had been documented.

Because of illness, counsel was unable to appear for oral argument, and with the court's permission it was waived.

II

Plaintiff sued defendants for $20,000 at prime rate plus 4% interest and 15% attorney's fees. Defendants answered and counterclaimed alleging fraud, breach of

contract, and violation of Federal and State law.

The parties had discovery and plaintiffs motion for summary judgement on defendant's counterclaim was denied. [Jacket entry of November 3, 1982. Transcript of proceedings before Judge Bowers in Court Room 9 on November 3, 1982 -- 55 pages by J&J court transcribers]

Pretrial proceedings were held and defendants were asked why they wanted to call plaintiff's attorneys as witnesses. Attorney Chopivsky, who was compelled to withdraw his representation later on, [R-195] filed an En Camera allegation of facts with the Pretrial Judge, which is attached hereto. A trial date was set and the case was ordered to go to trial.

However, a Superior Court Judge, acting Sua Sponte advised the plaintiffs to apply for Civil 1 status. Plaintiffs filed their motion and it was granted by the Superior Court Judge [Jacket entry in Supp. R. 4]

The case was then taken by the Court from the scheduled trial date and defendant's case was assigned under Superior Court Civil Rule 40-11.1/ Because of the application of superior Court Civil Rule 40-11 to them, defendants were require to move to amend their counterclaim to specifically include RICO violations. The amendment to the complaint was granted and discovery was reopened for the plaintiff but denied to the defendants [Order, Supp. R. 5]. Defendant Burleson was again deposed and

both defendants were again required to answer Defendants Interrogatories and Request for Production of documents [Supp. R. Index pages 6-97] which consisted of approximately 71 pages.

Defendants alleged that the unequal application of SC-40-11 is in violation of their due process rights and equal treatment of law and is in conflict with the discovery rules of the Federal and Superior Court, including Rules 1, 4, 16, 40 and 40-1.

III

On June 5, 1987, Judge Eugene Hamilton held that the Superior Court had jurisdiction to hear Civil RICO claims, pursuant to Gulf Offshore Company vs.

Mobil Corporation, 453 U.S. 473 [1981] [Order attached] and ordered this case to trial.

On July 31, 1986, Judge Curtis VonKann, in an unrelated case which was awaiting trial, dismissed the Civil RICO count and held that Civil RICO claims may not be maintained in Superior Court, expressly rejecting the ruling of Judge Hamilton. [Order attached] This case is presently awaiting trial.

During the trial of this case at bar, the Trial Judge had placed in the Trial Transcript, [P-162, L-18 in the afternoon session] a statement stating that he had a meeting with a named Appellate Court Judge of the D.C. Court of Appeals, and that he had to see him later on that afternoon. And on page 163, line 15, of the trial

transcript, in front of the jury, the Trial Judge placed in the record and suggested that the Attorney for the Plaintiff Bank take a look at a very very good article on defending Civil RICO claims.

The trial went on for approximately three days without the presence of Defendant Burleson.

While pending the court's ruling on the defendant's Motion For a New Trial with a Memorandum and Exhibits in support thereof, the court permitted attachment and condemnation of $62,057.15 of defendant Burleson's law firm and IOTA accounts. [Reply to Opposition to Motion for New Trial, R. 190].

Defendants, Appellants have filed their Civil Appeal Statement with their

Motion for New Trial attached, their docketing statement and briefs in which they state, among other things that they were denied a fair trial, defendant's property was unconstitutionally taken, and defendant's counterclaim was prejudiced by two inconsistent orders and erroneous interpretation of Gulf Offshore Company vs Mobil Oil Corporation, supra. Defendants urged that they were prejudiced by the misapplication and unequal treatment by Superior Court Civil Rule 40-11, and that they had been denied due process and equal treatment of the law.

Wherefore, defendants respectfully request En Banc Consideration and Rehearing.

Respectfully submitted,

William A. Burleson
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4 Exhibits
and Trial Transcripts of
December 5, 1986

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED NOVEMBER 15, 1988
RICHARD B. HUFFMAN
CLERK

Nos. 87-262 and 87-263

FLORENCE M. STANSEL ET AL.,

Appellants/cross-appellees,
CA15870-80

v.

AMERICAN SECURITY BANK,

Appellee/cross-appellant.

BEFORE: *Rogers, Chief Judge; Mack, Newman, Ferren, Belson, *Terry, *Steadman, and Schwelb, Associate Judges.

O R D E R

On consideration of the petition of appellants/cross-appellees for rehearing and rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and

it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

Copies to:

Honorable Eugene N. Hamilton

Clerk, Superior Court

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FLEMMING V. UNITED STATES, ETC., D.C. App. Nos. 86-856 and 86-864, August 29, 1988. Reversed and remanded per Terry, J. (Newman and Rogers, JJ. concur). David C. Gray, appointed by this court, for appellant Flemming. Ellen Pearlman with Steven H. Goldblatt, Dori Bernstein, Lesley Anne Fair, and Janis Brennan, John Monahan and John Bickerman, Student Counsel, for appellant Brown. Jody Goodman with Joseph E. diGenova, Michael W. Farrell and William M. Jackson for appellee. Trial court--Kennedy, J.

TERRY, J.: Appellant Brown was convicted of distributing cocaine, and both appellants and a co-defendant,

Marcus thompson, were convicted of possession of cocaine with intent to distribute it, all in violation of D.C. Code #33-54(a)(1) (1987 Supp.). While the jury was deliberating, the trial court excused one juror whose impartiality appeared to be in doubt and allowed the remaining eleven jurors, over objection, to return a verdict. In excusing the juror, the court relied on a recently amended rule, Super.Ct.Crim.R. 23(b), which permits the court in its discretion to excuse a juror during deliberations "for just cause," leaving only eleven jurors to decide the case. On appeal from their convictions, Flemming and Brown challenge this decision on several grounds. We hold that rule

23(b), as amended, is invalid, and accordingly we reverse the convictions of both appellants.

I

Appelants were arrested along with two other persons after two police officers, watching from a concealed observation post, saw the four of them engaged in what appeared to be a drug transaction. Flemming was seen coversing with a man named Moore, who handed him some money. Flemming then walked up the street a short distance and gave the money to Marcus Thompson. Thompson, followed by Flemming, went a little farther up the street and spoke to Brown, who then handed Flemming several small white objects. The officers radioed

descriptions of the four men to an arrest team, who promptly appeared on the scene and arrested all four. Before his arrest, Flemming dropped some money on the ground; an officer recovered it and found that it totaled $68. From Flemming's pocket another officer recovered five plastic zip-lock bags of cocaine and a Sucrets box containing seven empty plastic bags with cocaine residue inside. Brown likewise dropped a change purse to the ground. His arresting officer seized it and found that it contained nineteen plastic bags of cocaine. The officer also found a bag of cocaine and $59 in Brown's pocket.

Detective Lawrence Coates, called as an expert witness, testified that

the quantity and packaging of the cocaine found on both appellants showed their intent to distribute the cocaine. Coates also said that the actions of both men constituted a "classic drug operation" with Flemming and Brown in the respective roles of "runner" and "holder."

Appellants presented no evidence. Thompson, their co-defendant, took the stand and denied being involved in any drug transaction.

The jury was instructed at the end of ;the fifth day of trial and began to deliberate the following morning. At about 1:45 p.m. the court received a note from the jury stating:

> A juror needs to know where the expert, Mr. Coates, lives. If he

lives on [a certain street] in the 1400 block, he is a neighbor of hers, and she believes that that may affect her ability to be unbiased as it relates to his testimony. Since neither the prosecutor nor the court could reach Detective Coates at that moment, the court agreed to "assume that he does live in the area" of the juror's home. Both appellants promptly moved for a mistrial, which the court denied.

The court then called the juror into the courtroom and questioned her outside the presence of the other jurors. the djuror said that she and her mother lived across the street from Detective Coates and his wife and that her mother had once attended a

party in his house. She did not know his name before the trial, however, and had not recognized him until "sometime during his testimony, toward the end of it," when she realized that he might be her neighbor (though she was "not really sure" even then). The juror acknowledged asking the other jurors if she should tell the court that Coates might be a neighbor, but she said she had not voiced her opinion of him or his testimony.

After all counsel had a chance to question the juror, the court excused her from further participation in the case. The next morning, after researching the issue, the court ruled that there had been good cause to excuse her. The court said that it

had specifically refrained from asking the juror if she could render a fair and impartial verdict, having concluded from the note that he status as Coates' neighbor might affect her ability to remain unbiased with respect to his testimony. Defense cousel again moved for a mistrial, which the court denied, stating that there was not even "any hint" that the other jurors had been tainted. Concluding that the burden of a five-day trial on the court was "severe," the court decided to invoke Super.Ct.Crim.R. 23(b) and so to allow the remaining eleven jurors to continue deliberating. The court then instructed the eleven jurors to resume their deliberations, and a few hours

later they returned a verdict.

II

Super.Ct.Crim.R. 23(b) states:

Jury of less than twelve. Juries shall be of twelve (12) but any time before verdict the parties may stipulate in writing with the approval of the Court that the jury shall consist of any number less than twelve (12) or that a valid verdict may be returned by a jury of less than twelve (12) should the Court find it necessary to excuse one or more jurors for any just cause after trial commences. Even absent such stipulation, if the Court finds it necessary to excuse a juror for just

cause after the jury has retired to consider its verdict, in the discretion of the Court a valid verdict may be returned by the remaining eleven (11) jurors. The second sentence was added in 1985, making the superior Court rule identical to its federal counterpart, Fed.R.Crim.P. 23(b), which was similarly amended in 1983.

Appellants argue that Rule 23(b) is invalid because it conflicts with D.C. Code #16-705 (1981), which guarantees twelve-person juries absent stipulation by the parties. They cite D.C. Code #16-701 (1981) as requiring that Superior Court rules be consistent with pertinent statutes. They also claim that Rule 23(b)

violates the principal that rules of procedure cannot alter substantive law. The government replies nthat the rule and section 16-705(c) do not conflict but may be read consistently. If the two do conflict, the government argues, the rule would supersede the statute because D.C. Code #11-946 (1981) dictates that the Superior Court follow the Federal Rules of Criminal Procedure, and under 18 U.S.C. #3771 (1982) federal rules take precedence over existing, inconsistent statutes.

We agree with appellants that rule 23(b) is invalid because it conflicts with section 16-705(c) and thereby violates section 16-701. We recognize that courts have a duty to

reconcile allegedly conflicting statutes and to give effect to both whenever possible. District of Columbia v. Smith, 329 A.2d 128, 130 (D.C. 1974); accord, Morton v. Mancari, 417 U.S. 535, 550-551 (1974). Assuming arguendo that the same duty exists when a court is faced with a conflict between a statute and a rule, the court6 need not attempt to reconcile one with the other if doing so would deprive either of its "essential meaning." District of Columbia v. Smith, supra, 329 A.2d at 130.

The government asks us to read Rule 23(b) and section 16-705(c) consistently by interpreting the latter to require twelve jurors at the

empaneling of the jury and at the beginning of deliberations, but not necessarily at the return of the verdict. We find this interpretation strained at best and conclude that it robs common-sense reading of section 16-705(c), a jury of twelve means twelve persons who hear the evidence, deliberate, and vote on a verdict--in other words, twelve persons who function as jurors throughout the entire trial from beginning to end. The Kansas Court of Appeals, in Schultz v. Kansas Gas & Electric Co., 7 Kan.App.2d 484, 486 (1982), regarded this concept as "fundamental"; so do we.

In this case it is plain to us that the rule and the statute are in

direct conflict. Section 16-705(c) guarantees twelve jurors to every defendant, and to the government, unless they both expressly consent to a lesser nember. Rule 23(b), on the other hand, empowers the court to allow eleven-person juries even without the consent of the parties. Had such a conflict arisen in federal court between Fed.R.Crim.P. 23(b) and and a federal statute, the rule would prevail over the statute because of 18 U.S.C. #3771. But the situation is different in the District of Columbia courts. D.C. Code #16-701 demands that all Superior Court rules be consistent with statutes applicable to the business of the court. The second sentence of Rule 23(b) is void because

it violates this statutory provision.

Contrary to the government's claims, 18 U.S.C. #3771 does not apply to the Superior Court through D.C. Code #11-946. The latter statute requires the Superior Court to follow federal rules of procedure, but it does not also impose on the Superior Court the federal policy, codified in 18 U.S.C. #3771, that rules supersede inconsistent statutes. Nor does section 11-946 grant the Superior Court (or this court) the power to overturn any District of Columbia statute by adopting a court rule. Moreover, 18 U.S.C. #3771 is expressly limited to rules governing proceedings inthe United States District Courts, in the Supreme Court of Puerto Rico,

and before United States Magistrates. There is no counterpart to 18 U.S.C. #3771 in the District of Columbia Code that would allow Superior Court rules to nullify or take precedence over District of Columbia statutes.

The government asserts that, had the Superior Court not adopted rule 23(b), it would be bound by D.C. Code #11-946 to follow Fed.R.Crim.P. 23(b). We reject this argument because its premise is unsound. By deciding not to modify the Federal Rule, the Superior Court did not "adopt" a rule of its own but merely allowed the Federal Rule to take effect by operation of section 11-946. The result of this decision is that, as a matter of law, Superior Court rule

23(b) is Federal Rule 23(b), not a conceptually distinguishable rule with identical language. Thus we must decide whether a Federal Rule which, by Act of congress, becomes a Superior rule may supersede an inconsistent provision of the District of Columbia Code. We hold that it may not. Once it becomes a superior Court rule, it must behave like a Superior Court rule; that is, under section 16-701, it must be consistent with any statute "applicable to [the court's] business." Therefore, reading sections 11-946, 16-701, and 16-795(c) together so as to give effect if possible to all three sections, we hold that to the extent they are or may be in conflict, the more specific

provisions of sections 16-701 and 16-705(c) limit the broad language of section 11-946.

We reach this conclusion for two reasons. First, as we have said, this court has a duty to construe two statutes which appear to be in conflict so as to give effect to both. However, when a statute of broad general application (such as section 11-946) is inconsistent with a more specific provision (such as section 16-705(c)), the latter provision "must govern or control, as a nclearer and more definite expression of the legislative will . . ." 82 C.J.S. Statutes #347(b) (1953), quoted with approval in District of Columbia v. Linda Pollin Memorial Housing Corp.,

313 A.2d 579, 583 (D.C. 1973); accord, Martin v. United States, 283 A.2d 448, 450-451 (D.C. 1971) (citing authorities). Second, sections 11-946, 16-701, and 16-705(c) were all part of the same congressional enactment, the District of Columbia Court Reorganization Act of 1970. In such circumstances our duty is all the greater to construe the separate sections harmoniously "so that no part of [the Act] will be either redundant or superfuluous." Office of People's Counsel v. Public Service Commission, 477 A.2d 1008, 1010 (D.C. 1982), aff'd, 460 U.S. 660 (1983). When this is impossible, however, we must give precedence to the more specific language. "However inclusive may be

the general language of a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactnment.'" Clifford F. MacEvoy Co. v. United States ex rel. Calvin Tomkins Co., 322 U.S. 102, 107 (1944) (citation omitted); accord, e.g. Howard v. Riggs National Bank, 432 A.2d 701, 709 (D.C. 1981).

The government makes the additional argument that this court has already determined the validity of Rule 23(b). It notes that the Superior Court submitted the proposed amendment of Rule 23(b) to this court "for approval," and that this court, by allowing the amendment to go into effect, must have determined that the

rule "governs the issue of unstipulated dismissal of juror in superior Court." The government misunderstands this court's role in the promulgation and adoption of superior Court rules of procedure. Our function with respect to changes in superior Court rules is #11-946. As we made clear in Haynes v. District of Columbia, 503 A.2de 1219, 1923 n.7 (D.C. 1986), our "approval" of any Superior Court rule "means only that this court must give its sanction to any rule which modifies the Federal Rules of Civil [or Criminal] Procedure." Since the 1985 amendment did not modify the Federal rule but, on the contrary, made the Superior Court rule identical to it, thyis

court could neither "approve" nor "disapprove" the amendment. The most we could do was to stay its effectiveness until the Superior Court could decide whether it wished to accept the amendment or to modify it, and that is precisely what we did.

We hold, as a matter of statutory construction, that the second sentence of Rule 23(b) is invalid because it conflicts on its face with D.C. Code #16-701 requires us to give precedence to the statute. See Haynes v. District of Columbia, supra, 503 A.2d at 1223; Sanker v. United States, 374 A.2d 304, 310 (D.C. 1977) ("the rule may not override the statute"); In re C.A.P., 356 A.2d 335, 343-344, rehearing en banc denied, 359 A.2d 11

(D.C. 1976); see also Washington-Southern Navigation Co. v. Baltimore & Philadelphia Steamboat Co., 263 U.S. 629, 635-636 (1924). the judgment of conviction is reversed, and this case is remanded for a new trial consistent with D.C. Code #16-705(c).